IN THE HIGH COURT OF JUDICTURE AT MADRAS

DATED : 24-03-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.17129 OF 2002

Esther Kirubavathy,
24/1, (New No.14), Akbarabad
1st Street, Kodambakkam,
Chennai 600 024. .. Petitioner

Vs.

1. The Government of Tamil Nadu,
   represented by its Secretary,
   Education Department,
   Fort St. George, Chennai 9.

2. The Registrar,
   University of Madras,
   University Buildings,
   Chepauk, Chennai 5.

3. The Joint Director of Collegiate
   Education, Chennai Region,
   Chennai 600 006.

4. The Secretary,
   Meenakshi College for Women
   (Autonomous)
   (managed by Ganapathi Educational Trust)
   C/o.I.I.E.T. Arcot Road, Kodambakkam,
   Chennai 600 024. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus to call for records comprised in the proceedings of the 3rd respondent in his O.Mu.No.2478/E3/2001 dated 22.3.2002 and in his O.Mu.No.2572/E3/2002 dated 6.5.2002 and that of the 4th respondent dated 16.5.2002 and quash the proceedings of the 3rd and 4th respondents dated 22.3.2002, 6.5.2002 and 16.5.2002 respectively and consequently directing the third respondent to consider the approval of the appointment of the petitioner as a regular Lecturer in English.

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For Petitioner : Mrs. Esther Kirubavathy
Petitioner-in-person

For Respondents 1&3 : Mr.S. Gomathynayagam
Special Govt. Pleader

Respondent-2 : Mr. Kandavadivel Doraisami
Respondent-4 : Mr.N. Damodaran

J U D G M E N T

The petitioner who has argued her case in person has prayed for quashing the proceedings of the 3rd respondent in O.Mu.No.2478/E3/2001 dated 22.3.2002 and in O.Mu.No.2572/E3/2002 dated 6.5.2002 and the 4th respondent dated 16.5.2002 and consequently directing the third respondent to consider the approval of the appointment of the petitioner as a regular Lecturer in English under 4th respondent college.

2. The facts giving rise to filing of the present writ petition are as follows :-

The petitioner passed M.A., in English in the second respondent University in December, 1980. At that stage, she was awarded an overall Grade- 'B' with an overall grade point average of 4.29. Subsequently, she passed M.Phil. in first class in the year 1986. She was appointed as a Lecturer in English in the Evening College of the first respondent and worked as such continuously from 1987 till 1996. For sometime she had also worked as temporary Lecturer in the Day College of the fourth respondent in the place of a permanent incumbent which had been approved by the second respondent. The second respondent in their earlier letter dated 12.11.1002 had informed the fourth respondent that the petitioner had passed M.A. (English) with 52.9%, qualified for the post of Lecturer as per the prescribed qualification then in force. The third respondent vide its order dated 9.5.1994 had approved for extending Government grant for temporary appointment as Lecturer in the leave vacancies from 8.10.1993 to 2.1.1994 and from 4.1.1994 to 4.3.1994. Similar orders were passed by the third respondent by order dated 28.8.1997 extending Government grant for appointment of the petitioner on temporary basis as a Lecturer in Loyola College from 12.1.1996 to 11.4.1996 and from 26.6.1996 to 10.4.1997. Similar orders were also passed by the third respondent for the academic year 1998-99 as well as 1999-2000. Thus, the petitioner had worked as Lecturer in Loyolla College for more than 5 years during which she was either getting UGC Scale while functioning on temporary basis against leave vacancies or on management scale otherwise. While the matter stood thus, the first respondent issued G.O.Ms.No.111 dated 24.3.1999. Annexure II of such G.O., dealt with

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educational qualifications for the post of Lecturer, which was to the following effect :-

> "Minimum requirements of a good academic record, 55% of the marks at the Masters level and qualifying in the National Eligibility Test or an accredited test. The minimum requirement of 55% need not be insisted upon for the existing incumbents who are already in colleges. 'B' in the seven point scale with letter grades 'O', 'A', 'B', 'C', 'D', 'E' and 'F' shall be regarded as equivalent of 55% wherever the grading system is followed."

3. Subsequently, on 2.4.2002, the second respondent addressed a letter No.A-III/2/2002/629 to the fourth respondent indicating that the petitioner was qualified to hold the post of Lecturer in English. At that time, the petitioner was working as Lecturer under fourth respondent college. However, at that stage, the fourth respondent served letter dated 16.5.2002 indicating that third respondent, namely, the Joint Director of Collegiate Education, had not approved the petitioner's appointment on the ground that the petitioner had secured 52.9% marks in M.A., whereas the minimum requirement was 55% marks. The petitioner was called upon to obtain revised consolidated mark statement in the second respondent University. The communication of the fourth respondent is obviously based on the communication received from the third respondent dated 22.3.2002, wherein the third respondent observed that since the petitioner had secured 52.9% marks, the letter given by the second respondent University that she was in Grade-B and, therefore, eligible, was not acceptable. These communications from third and fourth respondents have been challenged in the present writ petition.

4. The petitioner has made two submissions. First submission is to the effect that from the correspondence made by the University, namely, the second respondent, it is apparent that the petitioner has secured Grade- 'B' with 4.29 grade point and since as per G.O.Ms.No.111 dated 24.3.1999 Grade- 'B' has grade point from 3.50 to 4.49, which is equivalent to 55% to 64%, and the petitioner's grade point is 4.29, it must be construed that she had secured more than 55% marks and this conclusion is also fortified by the communication sent by the second respondent University. In the alternative, it has been submitted even assuming that the petitioner was not eligible on the footing that her marks was less than 55%, since the petitioner was eligible as per the prescribed norms earlier, the minimum requirement of 55% need not be insisted upon for the existing incumbents, who were employed as Lecturers already in colleges.

5. A counter affidavit has been filed by Respondents 1 and 3 opposing the stand of the petitioner. However, the second

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respondent University has filed a counter affidavit fully fortifying the submissions made by the petitioner. In the counter affidavit filed by the second respondent it is indicated that G.O.Ms.No.111 dated 24.3.1999 was adopted by them based on the UGC Notification, 1988 and approved by the Academic Council on 26.2.2000. In the said G.O., Seven Point Scale has been prescribed, which is to the following effect :-

Grade	Grade Point	Percentage Equivalent
'O' Outstanding	5.50 - 6.00	75 - 100
'A' Very Good	4.50 - 5.49	65 - 74
'B' Good	3.50 - 4.49	55 - 64
'C' Average	2.50 - 3.49	45 - 54
'D' Below Average	1.50 - 2.49	35 - 44
'E' Poor	0.50 - 1.49	25 - 34
'F' Fail	0 - 0.49	0 -24

Several documents have been filed.

6. On perusal of various documents, it is apparent that the petitioner Grade point has been accepted as 4.29 by the second respondent University and the University has categorically communicated that the petitioner was eligible. In the affidavit filed by the University it is also clarified that by virtue of the petitioner's Grade and the Grade point, it must be taken that the marks equivalent is more than 55%. This opinion, however, has not been accepted by the third respondent. According to the third respondent, since 52.9% marks had been awarded, the Grade of the petitioner should be taken to be 'C' and not 'B'.

7. Having given anxious consideration to the matter, in my opinion, the stand of Respondent No.3 cannot be appreciated. The second respondent University is the expert body which gives marks or degree to a particular candidate. From the materials furnished, it is apparent that the petitioner has secured Grade- 'B' with Grade point of 4.29. As per the norms laid down by the Government under G.O.Ms.No.111 dated 24.3.1999, a person awarded "B" Grade with Overall Grade Point Average 4.29 is equivalent to 55% to 64% and since the petitioner has admittedly Overall Grade Point Average of 4.29, the information furnished by the second respondent, which the expert body should have been accepted by the third respondent. The third respondent has exceeded his jurisdiction by trying to sit in appeal over the information furnished by the second respondent University in such matter and, therefore, the order passed by the third respondent cannot be sustained.

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8. Apart from the above, the second point raised by the petitioner is also acceptable. It is apparent that before G.O.Ms.No.111 dated 24.3.1999 was issued, the petitioner was working as Lecturer. Even though she was working as Lecturer in the Evening College, her appointment on temporary basis in the Day College had been accepted by the authorities at the relevant time and in fact the petitioner was being paid UGC Scale during those period. Therefore, even assuming that the petitioner did not have the required marks, as per G.O.Ms.No.111 dated 24.3.1999, she came in exception clause relating to incumbents at the time of G.O. was issued. It can be taken that the petitioner was an incumbent and it is not necessary for her to have more than 55% for being eligible to be a Lecturer. It is of course true that at that stage the petitioner was Lecturer in a different College, but that should be not considered as a point against the petitioner when she was selected in different college on regular basis. If the petitioner would have continued in the very same college, there could have been no objection for getting approval, but there cannot be any reason as to why her appointment should not get approval when she gets appointment in another college. In this context, it should not be ignored that being a Lecturer in Evening College or Day College on temporary basis and at other times against the management post, the petitioner had acquired valuable experience. It is also to be noticed that the petitioner had been engaged in special capacity on many occasions, which would go to show the petitioner's merit and experience, which is recognised by various educational institutions.

9. For the aforesaid reasons, the impugned proceedings of the third respondent dated 22.3.2002 and 6.5.2002, which has been communicated by the fourth respondent by letter dated 16.5.2002, are quashed. Respondent No.3 is directed to reconsider the matter in the light of the observations made and issue necessary orders. This may be done within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is accordingly allowed. No costs.

सत्यमेव जयते

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary,
   Government of Tamilnadu,
   Education Department,
   Fort St. George, Chennai 9.

2. The Registrar,
   University of Madras,
   University Buildings,
   Chepauk, Chennai 5.

3. The Joint Director of Collegiate
   Education, Chennai Region,
   Chennai 600 006.

1 cc to Ms. Esther Kirupavathy, (Party in person), Sr. 14869
1 cc to Mr.N.Damodaran, Advocate, Sr. 15026
1 cc to M/s. Muthumani Doraisamy, Advocate, Sr. 14985
1 cc to Govt. Pleader, Sr. 14899

WP.NO.17129/2002

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